



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

VIA ELECTRONIC MAIL

Mr. Stephen Holloway, Land Manager
Waco Oil & Gas Company
P.O. Box 397
Glenville, West Virginia 26351
steve.holloway@wacowv.com

Re: Clean Water Act Section 308 Information Requirement

Dear Mr. Holloway:

Enclosed please find an Information Requirement issued pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318 that requires that Waco Oil and Gas Company (Waco) personnel provide information regarding construction activities on the property located at approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-79 in Sutton, Braxton County, West Virginia (the Site). This information requirement follows EPA's inspection conducted on February 26, 2020 to determine compliance with Section 404 of the CWA. An Opportunity to Confer letter was sent to Waco on April 15, 2020, and EPA and Waco participated in a phone conference on May 20, 2020 to discuss potential violations alleged in the letter.

Compliance with this Information Requirement is mandatory. Failure to respond fully and truthfully to the Information Requirement in accordance with deadlines set forth, or to adequately justify such failure to respond, can result in enforcement action by EPA pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Please note that the provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

You may assert a business confidentiality claim covering all or part of the information required herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information required herein when it is received, EPA may make the information available to the public without further notice to you.

This Information Requirement is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35 (See 5 C.F.R. § 1320.3(c)).

You must respond in accordance with the instructions and deadlines set forth in the Information Request within thirty (30) days of receipt of this letter electronically to Lisa Trakis at trakis.lisa@epa.gov.



Please contact Ms. Lisa Trakis at (215) 814-5433 if you have any questions regarding this Information Request, or you may have your attorney contact Ms. Aviva Reinfeld, Assistant Regional Counsel, at (215) 814-2632.

Sincerely,

Richard A. Rogers, Branch Chief
Water Branch
Enforcement and Compliance Assurance Division

Enclosures (2)

cc: Jeremy Bandy (WVDEP) (Jeremy.W.Bandy@wv.gov)
Brad Wright (WVDEP) (brad.m.wright@wv.gov)
Roger Hanshaw (Bowles Rice LLP) (rhanshaw@bowlesrice.com)
Marc Monteleone (Bowles Rice LLP) (mmonteleone@bowlesrice.com)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	
	:	
	:	Proceeding under Section 308 of the
	:	Clean Water Act, 33 U.S.C. § 1318
Waco Oil & Gas Company	:	
P.O. Box 397	:	
Glenville, West Virginia 26351	:	
	:	
	:	
	:	
	:	
	:	
	:	INFORMATION REQUIREMENT
Respondent	:	
	:	
	:	

I. STATUTORY AUTHORITY

1. This Information Requirement is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318. The Administrator of the EPA has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region III, who in turn has delegated it to the Chief of the Water Branch. EPA hereby requires Waco Oil and Gas Company (Waco or Respondent) to provide the information specified below.

II. STATUTORY AND REGULATORY BACKGROUND

2. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the CWA, including but not limited to:
 - a. developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
 - b. determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - c. any requirement under Section 308 of the CWA; and
 - d. carrying out Sections 305, 311, 402, 404, and 504 of the CWA.

3. Failure to respond as directed to a CWA Section 308 Information Requirement is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil or criminal proceedings.
4. You may, if you desire, assert a business confidentiality claim covering all or part of the information Requirement herein in the manner described in 40 C.F.R. Part 2 Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies response to this Information Requirement when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. Chapter 35. (See 5 C.F.R. Section 1320.3(c)).

III. INSTRUCTIONS

5. Provide a separate narrative response for each question set forth below and for each subpart of each question.
6. Identify each answer with the corresponding number of the question and subpart to which it responds.
7. State the name, address, email address, telephone number, and occupation of each person providing responses, or contributing information to responses, to each request for information below.
8. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and identify the question or subpart to which it relates.
9. Answer each question to the extent possible. If any question cannot be answered in full, explain why to the extent possible. If your responses are qualified in any manner, please explain.
10. If information or documents unknown or unavailable to you as of the date of your response to this request become known or available to you after submitting your response to the request, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide a corrected response.
11. Each submission pursuant to this request must be accompanied by the following certification and must be signed by a representative of Waco Oil and Gas Co., Inc. and authorized to respond on behalf of that entity.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

Signed: _____

Title: _____

Date: _____

12. All information shall be submitted within thirty (30) days of receipt of this Request for Information electronically to:

Lisa Trakis
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region III
1650 Arch Street (3ED32)
Philadelphia, PA 19103-2029
trakis.lisa@epa.gov

If you are unable to send requested documentation electronically, please contact Lisa Trakis via phone or email to discuss alternate delivery methods. In both your message and written response, please indicate the specific information requested by EPA that you are unable to provide electronically.

13. If you have questions regarding this Information Requirement, you may contact Ms. Lisa Trakis at the above email address or at (215) 814-5433.

IV. DEFINITIONS

14. The terms "you" and "your" shall refer to Waco Oil and Gas Co., Inc. (hereinafter, Waco or Respondent).
15. The term "document" shall refer to a "writing," "recording," and "photograph" as those terms are defined in Rule 1001 of the Federal Rules of Evidence. The term "document" shall also refer to electronically stored "writings," "recordings," "emails," and "reports," among other things, created in the ordinary course of business and that are relevant to the operation or business undertakings of Waco or other business entities owned or operated by Respondent. Documents should be produced as they are kept in the usual course of business.
16. The term "Route 19 Site" or "Site" refers to Braxton County Parcel ID: 04-06-008Q-0009-0000 located approximately 1.25 miles southeast on Route 19 from the intersection of Route 19 and I-

79 in Sutton, Braxton County, West Virginia (38.6087, -80.7368) as shown in Attachment 1 to this Information Requirement.

17. The terms “Pad 1” and “Pad 2” refer to the two flat pads constructed on the Site and shown in Attachment 1. “Pad 1” is the southern pad, and “Pad 2” is the northern pad.
18. The term “pollutant” refers to “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2.
19. The term “Best Management Practices” or “BMPs” refers to “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” 40 C.F.R. § 122.2.
20. The term “discharge of fill material” refers to the addition of any pollutant, including rock, sand, dirt, or other material, into waters of the United States which has the effect of replacing portions of those waters with dry land or changing the bottom elevation of those waters, as defined in 40 C.F.R Part 232.
21. The term “Notice of Intent” refers to the application for coverage under a general National Pollution Discharge Elimination System (“NPDES”) permit issued by the West Virginia Department of Environmental Protection (“DEP”), authorizing certain discharges of pollutants, including stormwater.
22. The term "identify" with respect to a natural person means to provide that person's name, address, telephone number, title, and relationship to Respondent. The term "identify" with respect to a business entity means to provide that entity's name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.
23. The term "Day" shall mean a calendar day. In computing any period of time under this Request pursuant to Section 308, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.

V. INFORMATION REQUIREMENT

The Respondent is hereby required, pursuant to Section 308 of the CWA, 33 U.S.C § 1318, to submit the following information to EPA within thirty (30) calendar days of receipt of this Information Requirement:

24. Identify every parent, subsidiary, or other entity affiliated with Waco. With respect to each parent, subsidiary or affiliated entity, identify an agent for service of process and a mailing address. The term “affiliated entity” includes, but is not limited to, any entity that share a

common parent or a common majority shareholder with Waco.

25. Provide the following business information:
 - a. A description of the nature of all services and operations performed by Waco;
 - b. An organizational chart;
 - c. The name(s) and contact information of the officer(s) of the business;
 - d. The person(s) authorized to speak and act on behalf of the business; and
 - e. The person(s) responsible for the Site.
26. When did Waco purchase the Site?
27. Please provide the following:
 - a. At the time of purchase, what was Waco's intended use for the Site?
 - b. At any point from the date of purchase to present, did Waco's use for the Site change? If so, explain when and for what intended use.
 - c. What is Waco's future intended use for the Site?
 - i. Is Waco currently expanding construction work on the Site?
 - ii. Does Waco have any plans for additional construction on the Site, and if so, what are they, and what is the expected start and completion date or any future construction plans?
28. From the date of purchase until present, what construction activities did Waco perform on the Site and where? Please provide information including but not limited to:
 - a. The time periods when the cell tower, access road, Pad 1, and Pad 2 were constructed;
 - b. A description of any other earthmoving activities within the last five years at the Site; and
 - c. What Waco has done on-site since February 26, 2020, including actions taken to stabilize the Site.
29. Provide copies of all documents related in any way to earth disturbance performed on the Site, including but not limited to clearing, grading, excavation, manipulation (including culverting or diversion) of streams, stormwater management and/or construction conducted from date of purchase to present. Such documentation should include, but not be limited to:
 - a. Maps, tax maps, appraisals, and zoning requests;
 - b. Photographs, including, but not limited to, any photographic evidence of work or stabilization conducted on the Site from February 26, 2020 to present;
 - c. Stormwater Pollution Prevention Plans ("SWPP"), erosion and sediment control plans, and any documentation related to the implementation of the BMPs used during earthmoving or construction activities; and
 - d. Plans, site design and surveys, engineering drawings, as-built diagrams identifying equipment or apparatus used to collect stormwater or wastewater or divert or change the flow of any streams on Site.
 - i. To the extent the location of all pipes, storm drains or other equipment or apparatus are unknown, please so indicate.
 - ii. If there are any culverts on the Site, state where they are located and if they are currently functioning as designed.

30. Provide copies of all invoices or work orders related in any way to earth disturbance, blasting, and/or construction conducted since June 1, 2015 at the Site.
31. Identify all persons who designed, directed, or implemented any earth disturbance blasting, and/or construction conducted since June 1, 2015 at the Site.
32. Provide copies of all delineations or other identifications of aquatic resources on Site from Waco's date of purchase to present.
33. Provide copies of all permits or other authorizations provided by any governmental entity (federal, state, local), including, but not limited to, all NPDES permits pursuant to Section 402 of the Clean Water Act (33 U.S.C. § 1344) and any authorizations to discharge dredged and/or fill material pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), in effect as of or since June 1, 2015.
34. Provide copies of all applications for permits or other authorizations described in Question 33, above.
35. Describe any discussions Waco has had with any federal, state or local agencies regarding permits from June 1, 2015 to present, and provide any documents related to these discussions, including but not limited to Waco's response to DEP's request for Waco to submit a Notice of Intent ("NOI") for an NPDES permit in February, 2020. Include:
 - a. Documentation of Waco's progress to apply for permit coverage and
 - b. Any written responses from Waco to DEP regarding applying for permit coverage.
36. List any contracts or agreements, including lease agreements, that have been entered between Waco and any person(s) or business(es) with an interest in the Site from June 1, 2015 to present. Indicate whether such contract or agreement is currently in effect.
 - a. Enclose copies of such contracts or lease agreements.
 - b. Describe any oral agreements between Waco and any person(s) or business(es) with an interest in the Site.
37. List any materials or products stored on the Site from June 1, 2015 to present. Identify on a map the location of these materials or products. As a part of this answer:
 - a. Provide a description of the materials or products;
 - b. Explain what the materials or products were being used for;
 - c. Explain how the materials or products were stored; and
 - d. Explain at what point in time Waco started and stopped operating the Site as a staging area for pipes.
38. At any time, did Waco perform oil or gas exploration, production, processing, treatment or transmission on Site? If so, describe the nature of each activity.
39. Provide an explanation and documentation for any steps Waco took to comply with violations identified by DEP, including:
 - a. DEP's February 10, 2017 Order, Unilateral Order #8685;

- b. Inspection Reports and associated Notices of Violations from DEP from January 2017 to present, including, but not limited to, reports from January 2017, March 2017, April 2017, August 2017, April 2018, and February 2020; and
- c. Explain why Waco submitted two separate modifications for its project to DEP, what modifications were sought, and what changed about Waco's use of the Site.

VI. EFFECTIVE DATE

This INFORMATION REQUIREMENT is effective upon receipt.

Date: _____

Richard A. Rogers, Branch Chief
Water Branch
Enforcement and Compliance Assurance Division

Attachment 1:
Waco Route 19 Morris Development Site

